

TO: THE HONORABLE GINA MCCARTHY
ADMINISTRATOR (MAIL CODE:1101A)
U.S. ENVIRONMENTAL PROTECTION AGENCY
1200 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, DC 20460

2015 OCT 13 AM 7:03

VIA: CERTIFIED MAIL NO. 7015 0640 0004 4137 0536

FROM: ANNETTE T. GOLZ
WILLIAM GOLZ, Ph.D.

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Ex. 6 - Personal Privacy

- RE:** (i) Our July 7, 2014 request submitted to the U.S Environmental Protection Agency ("EPA") and the Department of the Army ("Army") for a "jurisdictional determination" ("JD Request") regarding a United States Geological Survey ("USGS") "blue-line stream" (the "Historic Wash") that crosses our property on its way to join the Verde River between the bald eagle nesting sites on Tonto National Forest and the Fort McDowell Yavapai Nation;
- (ii) Dredging and filling of the Historic Wash and other historically significant, high-order ephemeral streams on single parcels throughout the Rio Verde Foothills with landscape-scale disruption of natural-stream morphology and processes and visible environmental degradation in violation of Section 404 of the Clean Water Act (the "CWA") including, but not limited to: (a) conditions for "Subdivisions" and "Notification" required by Nationwide Permit ("NWP") 29 for Arizona (SPL-2012-316-RJD) and (b) 33 U.S. Code § 1344(e);
- (iii) The need to begin implementing the NWP-29 requirement for a pre-construction notification ("PCN") with regard to individual parcels in the RVF.

DATE: SEPTEMBER 30, 2015

Dear Administrator McCarthy:

A brief outline of my background is relevant to this request: I earned my Ph.D. under a Louisiana Board of Regents' Fellowship for research on the mathematics of water-quality modeling which built upon my M.S. work on how contaminant cycling is mediated by the structure and function of ecosystems. My field work has included wetland delineation for Section 404 of the CWA, and while employed by the state of Louisiana, I worked with staff from the EPA and U.S. Army Corps of Engineers (the "Corps") on CWA issues.

In 2009, we purchased property in a rural area along the northeastern fringe of the Sonoran Desert known as the Rio Verde Foothills ("RVF"). The RVF drainage encompasses ecotones that grade from desert to thorn scrub to riverine wetlands and is surrounded by nature preserves, national forest and the Verde River. We are birders, and as we hiked the area, we observed changes in plant communities effected by recent changes in hydrology. Upon reviewing the historical aerials of the RVF drainage, we saw that high-order ephemeral streams had been diverted piecemeal around residences, corrals and other developments, altering water budgets that had evolved over decades.

In an effort to find a partial political solution at the local level, in 2009 we contacted our state representative regarding possibilities for mitigating the effects of development on the RVF drainage and its ecosystems which led to discussions of increasing the preserve area on state lands. As another avenue to a solution, I discussed the permitting issues with local engineers that

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prepare drainage plans for properties in the RVF and was told that they had been advised by the responsible County agency that the local Corps' office was not requiring Section-404 conditions to be met on any development below the subdivision scale. In 2011, I contacted the County engineer who approves grading and drainage permits for the RVF and expressed concern that Corps' approval was not being obtained for the dredging and filling of historic ephemeral streams that were apparent "waters of the United States" ("WOTUS").

As discussed in our letters, and as noted by the U.S. Fish and Wildlife Service, WOTUS losses have been identified by the Corps on subdivision-scale developments in RVF. The Corps has disregarded WOTUS on single parcels (one acre and larger) within and beyond the boundaries of subdivisions where individual losses and their cumulative environmental-impacts violate the rule and the intent of Section 404 of the CWA.

To the extent that this raises novel and important, possibly precedential, legal issues, consistent with the January 19, 1989 Memorandum of Agreement between the EPA and the Corps, we elevated our July 7 JD Request and July 20 "JD Addendum" to Ms. Nancy Stoner (then Acting Assistant Administrator for Water at the EPA) and the Honorable Jo-Ellen Darcy (Assistant Secretary of the Army—Civil Works). Assistant Secretary Darcy responded in a September 25, 2014 letter: "the Army is providing you with this response on behalf of both agencies. ... The Arizona branch of the Los Angeles District will coordinate with EPA's Region 9 office, per our normal procedures for such requests, to provide a detailed response regarding the jurisdictional status of the water feature mentioned in your letter."

The Los Angeles District and the Arizona branch subsequently refused to act on Assistant-Secretary Darcy's directive to carry out our JD Request, although I was not heretofore aware of the CWA granting discretion to the Corps to refuse to carry out a "jurisdictional determination" on a feature that is a likely WOTUS: the Historic Wash that crosses our property is a USGS "blue-line stream," is part of the USGS National Hydrography Dataset⁽¹⁾ and has a direct hydrologic connection to the Verde River in an area of sensitive habitat.

We documented several examples upstream of our property where the Historic Wash has been filled with large losses of its stream bed—its flow diverted into another watershed resulting in the abandonment of miles of the historic channel. Those losses are exemplars of ephemeral-stream diversions throughout the drainage in apparent violation of NWP 29 for Arizona with cumulative environmental affects that violate 33 U.S. Code § 1344(e). The Los Angeles District has indicated that they have discretion to decline to investigate

¹ <http://watersgeo.epa.gov/mwm/> : select "Topography" ; in the "Go To" field, enter Lat. & Long: "33.7559 -111.7522" ; click "Go" ; from the drop-down menu, "Other EPA Water Data," select "Rivers & Streams (NHD)" ; click on "Go" again to identify the Historic Wash.

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the potential violations we carefully documented as examples of the need for future implementation of the conditions required by NWP 29. In my opinion, that misrepresents the Corps' legal responsibilities under the CWA in a way that undermines the integrity of the act and the credibility of those entrusted with its enforcement, supporting the perceived policy of non-enforcement on single parcels related to me by local engineers.

As the authority for enforcement of the CWA rests ultimately upon the EPA, please accept this letter as our respectful request to you to have EPA Region 9 carry out the JD Request on our property and the concomitant investigation of the cumulative effects resulting from a pattern of NWP-29 violations in the RVF drainage. Specific examples of stream-bed losses, hydrological and mass-transport issues and resulting environmental effects were detailed in our prior letters which, upon Ms. Stoner's advice, we provided to Mr. Mark Pollins, Director of EPA's Water Enforcement Division.

As detailed in our several letters to the EPA and the Army, the exemption from Section 404 of the CWA enjoyed by individual parcels in the RVF drainage became problematic when development reached a threshold where the destruction of natural stream-beds began to undermine ecological processes on a landscape scale.⁽²⁾ This will only grow worse given the current re-acceleration of development. In my opinion, as a civil engineer and environmental scientist, if development is allowed to continue without oversight as to future WOTUS losses on single parcels, anthropogenically imposed changes on the ephemeral-stream system, which are unavoidably attended by higher-energy flows and impairment of the ecosystem function of contaminant attenuation, will have dire and, for all practical purposes, irreversible effects. Those effects will include degradation of the riparian areas and water quality in the Verde River. This would be profoundly unfortunate as it is entirely preventable at the very small cost of beginning now by introducing the oversight required by the CWA to encourage responsible development.

If no action is taken to mitigate the progressing hydrological disruptions—in particular by initiating implementation of the NWP-29 requirement for a PCN on any newly proposed development of a single parcel in RVF, the mounting costs of deteriorating water-quality in the Verde River must be born by those immediately downstream, notably the Fort McDowell Yavapai Nation (the “Nation”). For that reason, I believe it would be appropriate for Region 9 to assign staff, or seek input, from their Environmental Justice team and to have a representative from the Nation present during the JD and the evaluation of the ecosystem effects of ephemeral-stream diversions.

² See, e.g., Levick, L., J. Fonseca, D. Goodrich, M. Hernandez, D. Semmens, J. Stromberg, R. Leidy, M. Scianni, D. P. Guertin, M. Tluczek, and W. Kepner. 2008. *The Ecological and Hydrological Significance of Ephemeral and Intermittent Streams in the Arid and Semi-arid American Southwest*. U.S. Environmental Protection Agency and USDA/ARS Southwest Watershed Research Center, EPA/600/R-08/134, ARS/233046, 116 pp.

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We will provide access to our property and accompany EPA staff on a tour of the RVF drainage, which will require several hours, at a minimum. We will appreciate your having someone from Region 9 contact us as soon as possible, as we have been waiting for over a year to be apprised of the jurisdictional status of the Historic Wash, which affects not only our property but the status of properties up- and down-stream.

Sincerely,



William Golz, Ph.D.

CC: Hon. Jo-Ellen Darcy

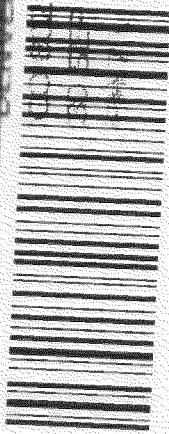
Assistant Secretary of the Army (Civil Works)

Via: E-mail and Certified Mail No. 7015 0640 0004 4137 0512

ANNETTE GOLZ
WILLIAM GOLZ, PhD

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